



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington DC 20515

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Republican Staff Director

February 7, 2022

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

The Honorable Michael L. Connor  
Assistant Secretary of the Army (Civil Works)  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310-0108

RE: Docket ID No. EPA-HQ-OW-2021-0602, Revised Definition of “Waters of the United States”

Dear Administrator Regan and Assistant Secretary Connor:

On November 18, 2021, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (together, the Agencies) released the pre-publication version of the proposed rule redefining the scope of waters protected under the Clean Water Act. We write to applaud the Agencies for taking this concrete and positive step toward restoring the strong clean water protections that our constituents, and all Americans, depend on. Federal protections based on sound science and consistent with the Clean Water Act are essential to ensuring clean water, which is essential for our economy and a healthy environment.

This rulemaking is critical to protecting water quality across the nation and the furthering of Congress’s intent when it enacted the Clean Water Act. The Clean Water Act’s sole objective is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>1</sup> Yet under the prior administration’s Navigable Waters Protection Rule (NWPR), now invalidated by two federal courts, streams and wetlands were ruled outside the protections of the Clean Water Act at unprecedented levels.<sup>2</sup> In addition to undercutting the Clean Water Act’s objective, the now-invalidated NWPR took us farther from providing clean safe water for American families,

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<sup>1</sup> 33 U.S.C. § 1251(a).

<sup>2</sup> EPA & Dep’t of the Army, Memorandum for the Record re: Review of U.S. Army Corps of Engineers ORM2 Permit and Jurisdictional Determination Data to Assess Effects of the Navigable Waters Protection Rule 2-3 (June 8, 2021), <https://perma.cc/Y66K-ESHC> (“Memorandum for the Record”).

communities, and businesses. Protecting water quality and maintaining intact wetlands and headwater streams, as contemplated by the administration's plan to first restore the pre-NWPR regulatory framework, consistent both with the Clean Water Act and recent Supreme Court decisions, and then to develop a lasting, more robust definition of "waters of the United States," also supports key congressional priorities and initiatives of the Biden administration.

The *Infrastructure Investment and Jobs Act*<sup>3</sup> made the "single largest investment in water that the federal government has ever made[.]" including \$55 billion dedicated to expanding access to clean water through initiatives such as replacement of lead service lines, measures to address PFAS contamination, and the enhancement of wastewater infrastructure.<sup>4</sup> The Act allocated another \$47 billion for climate resilience, including measures to help communities prepare for worsening floods.<sup>5</sup> Intact, healthy wetlands and headwater streams that absorb precipitation and floodwaters, reducing the risk and severity of flooding, protect lives and livelihoods and promote the goals behind the Clean Water Act, as well as the administration's overarching climate resilience goals.<sup>6</sup> In addition to serving as our most effective, natural guards against flooding, they serve as efficient, natural carbon sinks, mitigating our emissions by sequestering carbon. Without strong federal clean water protections, valuable wetlands and headwater streams, along with their pollution- and flood-prevention functions, will be lost.

Strong federal clean water protections are also key to meeting the Biden administration's,<sup>7</sup> and EPA's,<sup>8</sup> commitments to environmental justice. As described above—and as publicly acknowledged by the Agencies<sup>9</sup>—the NWPR has harmed waters across the United States. But this harm does not fall equally on all populations. The effects of such a dramatic withdrawal of federal clean water protections are disproportionately felt by low-income communities and communities of color—in many cases, the communities least equipped to handle them. Only with strong federal clean water protections, can the administration and EPA ensure that everyone—regardless of their zip code—has access to clean, safe water.

As noted above, clean water protections are critical to protecting national, regional, and local economies, including the businesses and industries that depend on the availability of clean water. This is especially true for our nation's farmers for whom the availability of safe and reliable sources of clean water is essential to safe and healthy crops and livestock. Your efforts to restore long-standing Clean Water Act protections over rivers, streams, and wetlands demonstrates that

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<sup>3</sup> P.L. 117-58

<sup>4</sup> EPA Fact Sheet, <https://www.epa.gov/infrastructure/fact-sheet-epa-bipartisan-infrastructure-law>

<sup>5</sup> NY Times, Infrastructure Bill Makes First Major U.S. Investment in Climate Resilience, <https://www.nytimes.com/2021/11/06/climate/infrastructure-bill-climate.html>.

<sup>6</sup> See, e.g., The White House, Fact Sheet: Biden Administration Roadmap to Build an Economy Resilient to Climate Change Impacts, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/15/fact-sheet-biden-administration-roadmap-to-build-an-economy-resilient-to-climate-change-impacts/>

<sup>7</sup> See Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities through the Federal Government" (Jan. 20, 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>

<sup>8</sup> Message from the Administrator (Apr. 7, 2021) <https://www.epa.gov/sites/default/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf>.

<sup>9</sup> Decl. of Radhika Fox ¶ 8, *Conservation Law Found. V. Regan*, No. 1:20-cv-10820-DPW (D. Mass. June 9, 2021), <https://perma.cc/G8RL-L7S5> ("Fox Decl."); Decl. of Jaime A. Pinkham ¶ 8, *Conservation Law Found. V. Regan*, No. 1:20-cv-10820-DPW (D. Mass. June 9, 2021), <https://perma.cc/NVB7-KLQC> ("Pinkham Decl.").

common-sense protections can, again, ensure both robust protection of the nation's waters and a robust agricultural economy. For example, most ordinary agricultural activities do not require permits under the Clean Water Act, which expressly excludes agricultural stormwater discharges and irrigation return flows, in addition to other normal farming practices like building or maintaining stock ponds or irrigation ditches, building farm roads, maintaining drainage ditches, and farming itself. This was true prior to the NWPR and remains true in your proposed replacement of the NWPR. In fact, the Corps estimates that less than one percent of the wetland area and about two percent of the stream reaches for which it has issued Clean Water Act permits are accounted for by agricultural discharges.<sup>10</sup> When farming operations do need permits, expedited permits under nationwide or general permit programs are often available.

In order to support the administration's and Congress's priorities, and to expeditiously restore science-based protections to the nation's waters and wetlands, we urge the Agencies to move quickly to finalize this proposal, and then turn to proposing a more protective, substantive definition of "waters of the United States." Thank you for considering these comments—we look forward to continuing to provide input as the Agencies pursue these important goals.

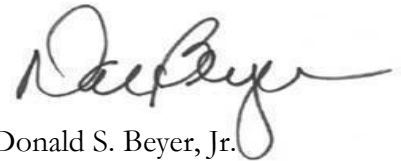
Sincerely,



Peter A. DeFazio  
Chair  
Committee on  
Transportation and  
Infrastructure



Grace F. Napolitano  
Chair  
Subcommittee on Water  
Resources and  
Environment



Donald S. Beyer, Jr.  
Chair  
Joint Economic Committee

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Rick Larsen  
Member of Congress

Eleanor Holmes Norton  
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Member of Congress

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Member of Congress

Danny K. Davis  
Member of Congress

Julia Brownley  
Member of Congress

Adriano Espaillat  
Member of Congress

Salud Carbajal  
Member of Congress

John P. Sarbanes  
Member of Congress

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<sup>10</sup> U.S. EPA and Dept. of the Army, Economic Analysis for the Proposed Revised Definition of "Waters of the United States" 96-97 (Dec.14, 2018) (Table IV-2: Authorized impact area of CWA section 404 permits issued in 2011-2015, by project type).

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Bradley S. Schneider  
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April 4, 2022

The Honorable Peter A. DeFazio  
Chair  
Committee on Transportation and Infrastructure  
House of Representatives  
Washington, D.C. 20515

Dear Chair DeFazio:

Thank you for your February 7, 2022 letter to the Environmental Protection Agency (EPA) and U.S. Department of the Army ("the agencies," hereafter) regarding the proposed rule to revise the definition of "waters of the United States." 86 Fed. Reg. 69372 (Dec. 7, 2021). The proposed rule to revise the definition of "waters of the United States" constitutes a return to the pre-2015 regulations, updated to reflect consideration of Supreme Court decisions and would re-establish in our regulations familiar and fundamental protections for waters and wetlands on a long-standing scientific, regulatory, and historical foundation. You can access the proposed rule at the following website:

<https://www.epa.gov/wotus/revising-definition-waters-united-states>. The public comment period for the proposed rule ended on February 7, 2022. The agencies are now in the process of reviewing public comments on the proposed rule and we will consider these comments as we work to shape the final rule.

The agencies acknowledge the support you expressed in your letter for the current rulemaking effort as well as your support for the agencies to pursue a subsequent rulemaking to establish a more protective and substantive definition of "waters of the United States." This feedback and input are appreciated and will be taken into consideration as the agencies remain committed to establishing a durable definition of "waters of the United States" that is informed by diverse perspectives and protects public health, the environment, and downstream communities, while supporting economic opportunity, agriculture, and industries that depend on clean water.

Thank you again for your letter. Please contact us if you have any remaining questions or your staff may contact Denis Borum in EPA's Office of Congressional and Intergovernmental Affairs at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or (202) 564-4836, or Stacey Jensen, Assistant for Regulatory and Tribal Affairs in the Office of the Assistant Secretary of the Army for Civil Works, at [stacey.m.jensen.civ@army.mil](mailto:stacey.m.jensen.civ@army.mil) or (703) 459-6026.

Sincerely,

A handwritten signature in black ink, appearing to read "Radhika Fox", is positioned above the name and title of the signatory.

Radhika Fox  
Assistant Administrator  
Office of Water

A handwritten signature in black ink, appearing to read "Michael Connor", is positioned above the name and title of the signatory.

Michael Connor  
Assistant Secretary of the Army  
(Civil Works)



cc: The Honorable Grace F. Napolitano, Chair,  
Subcommittee on Water Resources and  
Environment, Committee on Transportation  
and Infrastructure  
The Honorable Donald S. Beyer, Jr., Chair,  
Joint Economic Committee  
The Honorable Carolyn B. Maloney  
The Honorable Eleanor Holmes Norton  
The Honorable Julia Brownley  
The Honorable Salud Carbajal  
The Honorable Rick Larsen  
The Honorable Nanette Diaz Barragán  
The Honorable Danny K. Davis  
The Honorable Adriano Espaillat  
The Honorable John P. Sarbanes  
The Honorable Jerry McNerney  
The Honorable Stephen F. Lynch  
The Honorable André Carson  
The Honorable Jesús G. "Chuy" García  
The Honorable Chellie Pingree  
The Honorable Gwen Moore  
The Honorable Henry C. "Hank" Johnson,  
Jr.  
The Honorable Lucy McBath  
The Honorable Nikema Williams  
The Honorable Bobby L. Rush  
The Honorable Marcy Kaptur  
The Honorable Frederica Wilson  
The Honorable Joe Neguse  
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